

### REMARKS

In the present Application, forty-one (41) claims were originally filed. Claims 1-41 currently stand rejected. Claims 36-39 are objected to, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 14, 36, and 41 are amended herein. Applicants respectfully request that the Application be reconsidered in light of the present amendments and accompanying remarks.

### Allowable Subject Matter

In paragraph 55, the Examiner indicates that claims 36-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants therefore amend claim 36 in independent form including all of the limitations of the base claim and any intervening claims, to thereby place claim 36 in condition for immediate allowance. Claims 37-39 depend from amended claim 36, and therefore are also in condition for immediate allowance for at least the same reasons.

35 U.S.C. § 101

In paragraphs 4 and 5 of the Office Action, the Examiner rejects claims 14-39 and 41 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Examiner states that “[t]he system may be embodied wholly within software.” In response, Applicants herein amend claims 14 and 41 to recite “a processor device”. Applicants therefore submit that amended claims 14 and 41 may not be embodied “wholly within software”. Dependent claims 15-39 depend directly or indirectly from claim 14, and are therefore directed to statutory subject matter for at least the same reasons. Applicants therefore respectfully request the Examiner to withdraw the rejections of claims 14-39 and 41 under 35 U.S.C. §101.

35 U.S.C. § 103(a)

In paragraph 6 of the Office Action, the Examiner rejects claims 14, 16, 18-35 and 40-41 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,763,519 to McColl et al. (hereafter McColl). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference

teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of independent claim 14, Applicants submit that claim 14 recites limitations that are not taught by the cited reference, or by the Examiner's citations thereto. For example, claim 14 recites *"a system user viewing said user interface to interactively perform an analysis procedure of available system resources required to support said requested process, said user interface including projected resource usages for said requested process displayed in combination with allocated resources for existing processes."*

McColl generally teaches "a universal, high-level control mechanism for a signature-driven task scheduler" in which "[o]ne component of a task scheduler is a measure of the communication resources needed by the task" (column 6, lines 41-65). The Examiner repeatedly cites a single passage of McColl, starting at column 19, line 30, in support of most of the rejections of Applicants' claims under 35 U.S.C. §102. Applicants' respectfully submit that the cited passage fails to disclose the claimed limitations recited in claims 14, 16, and 18-41.

Although McColl alludes to a "user interface", Applicants respectfully submit that McColl fails to teach displaying a user interface that includes

“projected resource usages for said requested process displayed in combination with allocated resources for existing processes,” as claimed by Applicants. Furthermore, many of the claimed details for utilizing Applicants’ user interface are completely absent from McColl.

With regard to claim 41, “means-plus-function” language is utilized to recite elements and functionality similar to those recited in claim 14 which is discussed above. Applicants therefore incorporate those remarks by reference with regard to claim 41. In addition, the Courts have frequently held that “means-plus-function” language, such as that of claim 41, should be construed in light of the Specification. More specifically, means-plus-function claim elements should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof.

Applicants respectfully submit that, in light of the substantial differences between the teachings of the cited references and Applicants’ invention as disclosed in the Specification, claim 41 is therefore not anticipated or made obvious by the teachings of McColl. Applicants specifically direct the Examiner’s attention to Applicants’ discussion of FIGS. 8-11 (Specification, page 18, line 11 through page 24, line 4) which describes in detail the Applicants’ claimed “means for generating a user interface . . . .”

Regarding the Examiner’s rejection of dependent claims 16 and 18-35, for at least the reasons that these claims are dependent from an independent claim whose limitations are not taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations

of the independent claim, are also not taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 16 and 18-35 so that these claims may issue in a timely manner.

In addition, Applicants submit that McColl nowhere discloses the detailed “expanded user interface” recited in claim 18 by which a system user can “interactively manage said resources in said electronic device by alternately selecting a request cancellation, an existing task cancellation, and a resource analysis procedure that is performed by referencing an expanded user interface.” Applicants also submit that dependent claims 27 through 35 recite structure and functionalities not taught by McColl, including the “normal operational mode” of claim 27, and the “request mode” of claim 30.

With regard to the rejections of claims 14-16, 18-35, and 40-41, in paragraph 8 of the Office Action, the Examiner concedes that “McColl does not explicitly state that the projected resource usage is displayed in the user interface in combination with the allocated resources for existing processes.” Applicants concur. However, the Examiner rejects claims 14-16, 18-35, and 40-41 over McColl alone, without providing any additional specific references for support. It appears that the Examiner is utilizing Official Notice without expressly stating so. Applicants therefore respectfully request the Examiner to cite additional specific references in support of these rejections, and failing to do so, to reconsider and withdraw the rejections of claims 14-16, 18-35, and 40-41, so that the present Application may issue in a timely manner.

Furthermore, the Court of Appeals for the Federal Circuit has held that “obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination.” In re Geiger, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987). Applicants submit that there is no teaching of a combination that would result in Applicant’s invention, and therefore the obviousness rejection under 35 U.S.C §103 is not proper.

Applicants submit that the cited references, in combination with the Official Notice, do not suggest a combination that would result in Applicants’ invention, and therefore the obviousness rejections under 35 U.S.C §103 are improper. Applicants therefore respectfully request the Examiner to cite references in support of the Official Notice, and to also indicate where an explicit teaching to combine the cited reference may be found. Alternately, the Applicants request that the Examiner reconsider and withdraw the rejections of claims 14-16, 18-35, and 40-41 under 35 U.S.C §103.

For at least the foregoing reasons, the Applicants submit that claims 14-16, 18-35, and 40-41 are not unpatentable under 35 U.S.C. § 103 over McColl, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 14-16, 18-35, and 40-41 under 35 U.S.C. § 103.

35 U.S.C. § 103

In paragraph 30 of the Office Action, the Examiner rejects claims 1-13, 15, and 17 under 35 U.S.C. § 103(a) as being unpatentable over McColl in view of U.S. Patent No. 6,502,123 to Gulick (hereafter Gulick). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Applicants respectfully traverse the Examiner's assertion that modification of the device of McColl according to the teachings of Gulick would produce the claimed invention. Applicants submit that McColl in combination with Gulick fail to teach a substantial number of the claimed elements of the present invention. Furthermore, Applicants also submit that neither McColl nor Gulick contain teachings for combining the cited references to produce the

Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

The Examiner relies upon Gulick to support the rejections under 35 U.S.C. § 103(a). Gulick essentially teaches utilizing only "certified applications" to instantiate isochronous tasks to thereby ensure sufficient system resources. "The operating system will only initiate an application (sic) is known to be well-behaved by checking a list of certified applications" (column 2, lines 49-51). In addition, Gulick discloses that a "scheduler 218 may query a user via user interface 220 for action to take" when insufficient resources are available.

Applicants respectfully submit that the simple query disclosed by Gulick is far less than the substantial "analysis procedure" performed by a system user of Applicants' claimed invention. Furthermore, Applicants submit that Gulick discloses few details about how the foregoing query is presented to the system user, and nowhere teaches a user interface that includes "*projected resource usages for said requested process and allocated resources for existing processes*" as disclosed and claimed by Applicants. In addition, because of similar claim limitations, Applicants hereby incorporate the foregoing arguments made with respect to the Examiner's rejections of claims 14-16, 18-35, and 40-41.

Regarding the Examiner's rejection of dependent claims 2-7, 9-11, 13, 15, and 17, for at least the reasons that these claims are dependent from independent claims whose limitations are not taught or suggested, the limitations of these dependent claims, when viewed through or in combination



with the limitations of respective independent claims, are also not taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 2-7, 9-11, 13, 15, and 17 so they may issue in a timely manner.

The Examiner concludes that “[i]t would have been obvious . . . to combine McColl and Gulick . . . since the scheduling method and resource allocation method provided by McColl is given in a very broad manner . . . .” Applicants respectfully submit that a *general restatement of the advantages disclosed by the Applicants* deriving from implementation of the present invention cannot act as the required teaching or suggestion to combine cited references for a proper rejection under 35 U.S.C. § 103. Courts have repeatedly held that “it is impermissible . . . simply to engage in *hindsight reconstruction* of the claimed invention, using the Applicants’ structure as a template and selecting elements from references to fill in the gaps.” In re Gorman, 18 USPQ 1885, 1888 (CAFC 1991).

For at least the foregoing reasons, the Applicants submit that claims 1-13, 15, and 17 are not unpatentable under 35 U.S.C. § 103 over McColl in view of Gulick, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 1-13, 15, and 17 under 35 U.S.C. § 103.

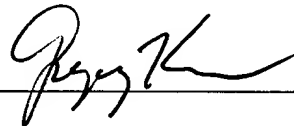
Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections under 35 U.S.C. §101 and 35 U.S.C. §103(a). Because the cited references, or the Examiner's citations thereto, do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-41, so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,

Date: \_\_\_\_\_

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